

Docket No.: 30001737-02 (1509-148)

PATENTREMARKS

To expedite prosecution, applicant cancels claims 10, 13, 16, 19 and 20 and has amended the claims to define applicant's contribution to the art with greater particularity. The foregoing amendments render the rejection of claims 13 and 16 under 35 U.S.C. 112, paragraph 2 as moot.

The claims, particularly as amended, are clearly patentable over Brilla et al. (US 6,389,276), previously relied on to reject claims 14 and 19 under 35 U.S.C. 102(e). The claims, as amended, are also not rendered obvious as a result of Brilla et al. and Shaffer (US 6,021,114), previously relied on to reject claims 1-10, 17 and 20 under 35 U.S.C. 103(a).

Claim 1, as amended, requires recording, at a service system, an audio message from a caller and forming the recorded audio message into a data message addressed to a mobile entity. In addition, the data message is pushed to the mobile entity over a data-capable bearer service of a mobile radio infrastructure at a time determined with a view to avoid peak traffic loadings of the mobile radio infrastructure. Independent claim 14 includes a similar limitation by requiring an audio message from a caller to be recorded and the recorded audio message to be formed into a data message addressed to a mobile entity. Subsequently, at a peak traffic loading time of a mobile radio infrastructure, the data message is pushed to the mobile entity over a data-capable bearer service of the mobile radio infrastructure. Independent apparatus claim 17 includes a somewhat similar limitation by requiring a message handler for recording an audio message from a caller and forming the recorded audio message into a data message addressed to a mobile entity and a transmitter for retrieving from memory the stored data message and pushing, at a non-peak traffic loading time of the mobile radio infrastructure the retrieved stored data message toward the mobile entity via a date-capable bearer service of the mobile radio infrastructure.

Applicant can not agree with the position set forth in the Office Action that Brilla et al. discloses pushing a recorded message as an e-mail to a mobile device. Instead, Brilla merely discloses pushing a notification and clearly does not disclose pushing a recorded audio message to a mobile entity in a data message sent over a mobile radio infrastructure. Instead, Brilla et al. simply discloses sending an e-mail from a conventional land line based voice mail system to a mobile network to enable the mobile network to send a notification to a concerned mobile device for immediate notification of the device user that a voice mail is waiting. The user must then

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contact the voice mail system to retrieve (i.e., pull) the message. The allegation in the Office Action that column 4, lines 39-45, and column 6, lines 3-15, that Brilla et al. discloses pushing a data message containing a recorded audio message to a mobile entity is incorrect.

Column 4, lines 39-45, of Brilla et al. describes a prior art mobile phone system in which a calling party is forwarded to an associated voice mail system if a called party cannot be reached on its mobile phone. The calling party then records a message after which the voice mail system sends an instruction to the mobile telephone phone switching office MTSO to send a message to the mobile telephone. The message notifies the mobile subscriber of the voice mail message. If the mobile phone is active, the MTSO sends a page to the mobile phone; otherwise, the MTSO stores the page until the mobile phone becomes available. By "page" is meant a paging message for notifying the mobile phone subscriber that there is a voice mail for him.

It is thus abundantly clear that only a page is pushed to the mobile phone. The subscriber must access the voice mail system in order to retrieve (pull) the waiting voice mail.

In relying on column 6, lines 13-15, of Brilla et al. the Office Action does not consider the previous portion of Brilla which makes it clear that the Brilla device is concerned with rapid notification of a voice mail subscriber waiting in a standard voice mail system associated with the subscriber's land line telephone. According to Brilla, to achieve this, a "notification message may be sent to a wireless digital telephone network, which generates a command to a wireless telephone used by the voicemail subscriber..." (col. 5, lines 64-66). The passage relied upon by the Examiner states:

"the notification message is output as an electronic mail (e-mail) message output onto a packet switched network, such as the internet, having a message destination address that includes a network address corresponding to an e-mail server of the wireless network."

Thus, again, Brilla is only talking about a notification message. This notification message is translated by the wireless network into a command that is sent to the mobile phone of the subscriber concerned. Then:-

"The digital telephone, upon receipt of the command, activates a message waiting indicator indicating receipt of a voicemail message at the landline-based voicemail system."

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Brilla could not be clearer, only a message-waiting notification has been pushed to the mobile telephone. Brilla does not disclose pushing an audio message recorded by a calling party to the mobile entity of the called party in a data message. Only a notification is pushed to the mobile entity.

Applicant can not agree with the position set forth in the Office Action that one of ordinary skill in the art would have combined Shaffer with Brilla et al. to arrive at the method and apparatus of applicant's independent claims. The purpose of the Shaffer arrangement is completely contrary to the purpose of the Brilla et al. arrangement. Hence, combining Shaffer with Brilla et al. flies in the face of the Brilla et al. objects.

Shaffer discloses a communication switch that delays sending data files until traffic levels fall below a threshold; the data files have already been sent by the sending endpoint entity and Shaffer is concerned only with the internal operation of the communication infrastructure.

In contrast, the main purpose of the Brilla device is to notify the intended recipient as quickly as possible of a waiting voice mail. Brilla et al., column 5, line 67, refers to the voice mail subscriber being instantly notified. The Shaffer delay feature is thus completely contrary to the Brilla et al. desire for instant notification.

The Examiner's allegation that one of ordinary skill in the art would have combined Brilla and Shaffer to provide cost savings is incorrect. The Brilla et al. arrangement is already very inexpensive because it merely pushes a notification message. As indicated in the second Brilla passage mentioned in the Office Action, the Brilla et al. mobile telephone infrastructure only sends a "command" to the mobile telephone. Such a command is (1) undoubtedly sent in a signaling channel having very narrow bandwidth (2) very short and (3) inexpensive to send. Hence, there is no basis for the position set forth in the Office Action that additional cost savings in Brilla would be obtained by using the Shaffer delay feature. In fact, the Shaffer delay feature actually adds cost to the Brilla et al. arrangement.

In view of the foregoing amendments and remarks, favorable reconsideration and allowance are respectfully requested and deemed in order.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

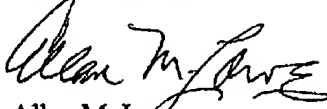
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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,

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